IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/06/2004

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.3637 OF 2002

Bala & Co.,
No.16, Kovai Road,
Karur, Karur District. .. Petitioner

-Vs-

1. The Joint Commissioner of
Commercial Taxes,
III S.M.R., Ezhilagam,
Chepauk, Chennai 600 005.

2. The Appellate Assistant
Commissioner, Trichy.

3. The Commercial Tax Officer,
Karur (West) Assessment Circle,
Karur. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari as stated therein.

For Petitioner : Mr.A. Thiagarajan

For Respondents : Ms.SaraswathiShivaraman Iyer
(Taxes)

:J U D G M E N T

Petitioner is a registered dealer. For the assessment year 1995-96, the petitioner was assessed to taxable turnover of Rs.7,56,700/- under the Central Sales Tax Act. Subsequently, notice was issued that the petitioner had paid tax on purchase of boiler equipments and furnace oil from registered dealer in other State by issuing □C□ Form declaration even though such items were not covered under the CST Registration Certificate at the time of such purchase. Subsequently, the petitioner has applied for inclusion of furnace oil in the CST Certificate on 28.9.1995. Since the purchases were effected prior to the period of 28.9.1995, such purchases were not entitled for concessional rate of tax at 4%. Accordingly, a notice was issued proposing to impose penalty under Section 10-A of the Central Sales Tax Act. The

petitioner in its objection indicated that purchase of boiler equipments and furnace oil against □C□ Forms had been made under a bonafide belief and as such penalty should not have been levied. The Assessing Officer did not accept the explanation of the petitioner and imposed penalty. The petitioner filed appeal. The appellate authority however reduced to the penalty to Rs.2,000/- by considering that the appellant was exporter of textiles and □ . . . it is very much essential for them to purchase items mentioned in the assessment order, such as labels, packing strips, polybags, hessein cloth etc.□. The Special Commissioner and the Commissioner of Commercial Taxes thereafter initiated a suo motu revision and issued show cause notice. The petitioner in reply to such show cause notice indicated that there was no mensrea and reiterated the contentions raised before the assessment officer. The Revisional Authority came to the conclusion that even though the assessment officer had referred to purchase of boiler equipments and furnace oil, the appellate authority had considered the matter as if the purchase was in respect of materials such as labels, packing strips, polybags, etc.. The Revisional Authority came to the conclusion that there was no application of mind by the appellate authority and ultimately such order of the appellate authority was set aside and the order passed by the assessment officer was confirmed. The present writ petition has been filed by the petitioner challenging the aforesaid order of the revisional authority.

2. Learned counsel appearing for the petitioner has submitted that before imposing penalty under Section 10-A of the Central Sales Tax, the concerned authority is required to come to a conclusion regarding mensrea of the dealer. It has been submitted by the petitioner that the petitioner did not have the requisite mensrea and □C□ Form had been utilised on a bonafide belief that the petitioner was entitled to purchase articles by using □C□ Forms. It has been submitted by the petitioner that even though such a specific contention has been raised, the revisional authority has not given any categorical finding. It is further submitted that, if the appellate authority did not apply his mind, the proper course for the revisional authority is to set aside the order of the appellate authority and remand the matter to the appellate authority for a fresh consideration.

3. In view of the provisions contained in Section 10-A of the Central Sales Tax Act and in view of the decision reported in 109 STC 392 (CORONATION ARTS CRAFTS v. STATE OF TAMIL NADU), it is obvious that the question of mensrea of a dealer is a requisite consideration. The petitioner had raised a plea that □C□ Form had been issued on the basis of bonafide consideration. It is of course true that the original authority has not accepted such a contention. However, the matter had been challenged in appeal by the present petitioner. Unfortunately, however, the appellate authority allowed the appeal of the petitioner on a total different conclusion which had no nexus with the contentions raised. Therefore, the revisional authority was obviously right in observing that the order passed by the appellate authority is without application of judicial mind. Once such a conclusion was reached, the revisional authority should have considered independently regarding the plea of bonafide raised by the petitioner or should have remanded the matter to the appellate authority for a fresh consideration.

4. In the present case, the revisional authority after coming to a conclusion that the order passed by the appellate authority was vitiated by non-application of judicial mind, confirmed the order of the assessing authority without any further deliberation on the question as to whether there is requisite mensrea or not. Even assuming that there is mensrea, the extent of penalty to be imposed has not been considered. Since the order of the revisional authority is silent on these aspects, the order passed by the revisional authority is quashed and the matter is remanded to the revisional authority for fresh consideration. The matter shall be decided afresh in accordance with law.

5. In the result, the writ petition is allowed and the order dated 2 4.7.2001 passed by the revisional authority is quashed and the matter is remanded to the revisional authority for fresh consideration. The matter may be finalised within a period of four months from the date of receipt of this order.

Index : Yes
Internet: Yes

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To

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